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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

[Docket No. FWS–HQ–MB–2019–0105; FXMB 12330900000//201//FF09M13200]

RIN 1018–BE20

Revision of Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is revising regulations governing the annual Federal Migratory Bird Hunting and Conservation Stamp Contest, also known as the Federal Duck Stamp Contest (Contest). We are instituting changes to design elements and judging requirements beginning with the 2020 Contest. Beginning in 2020, the Contest will include a permanent theme of “celebrating our waterfowl hunting heritage,” and it will be mandatory that each entry include an appropriate waterfowl hunting scene and/or accessory.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You can view the 2020 Contest Artist Brochure by one of the following methods:

- Duck Stamp Contest and Event Information: *<https://www.fws.gov/birds/get-involved/duck-stamp/duck-stamp-contest-and-event-information.php>*.
- Request a copy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

You can view the proposed rule and the comments received on it at the Federal rulemaking portal at *<http://www.regulations.gov>* in Docket No. FWS–HQ–MB–2019–0105.

FOR FURTHER INFORMATION CONTACT: Suzanne D. Fellows, Federal Duck Stamp Office, U.S. Fish and Wildlife Service, Department of the Interior, MS:MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–2145; suzanne_fellows@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1934, Congress passed, and President Franklin D. Roosevelt signed, the Migratory Bird Hunting Stamp Act. Popularly known as the Duck Stamp Act, it required all waterfowl hunters 16 years or older to buy a Stamp annually. The revenue generated from the sale of the Stamp is used to buy or lease waterfowl habitat.

Since its enactment, the Federal Duck Stamp Program has become internationally known as one of the most popular and successful conservation programs ever initiated.

Today, some 1.5 million Stamps are sold each year primarily to sportswomen and men prior to hunting related activities. As of 2019, Federal Duck Stamps have generated more than \$1.1 billion for the preservation of over 6 million acres of waterfowl habitat in the United States. Numerous other birds, mammals, fish, reptiles, and amphibians have similarly prospered because of habitat conservation made possible by the program. Many of the Nation's endangered and threatened species find food or shelter on refuges preserved by Duck Stamp funds. Moreover, protected wetlands help dissipate storm water runoff, purify water supplies, store flood water, and nourish fish hatchlings important for sport and commercial fishermen.

The first Federal Duck Stamp was designed by Jay N. "Ding" Darling, a nationally known political cartoonist for the Des Moines Register and a noted hunter and wildlife conservationist. In subsequent years, noted wildlife artists were asked to submit designs. The first Federal Duck Stamp Contest was opened in 1949 to any U.S. artist who wished to enter. Regulations governing the Contest appear in title 50 of the Code of Federal Regulations at 50 CFR part 91.

To select each year's design, a panel of noted art, waterfowl, and philatelic authorities is appointed by the Secretary of the Interior (Secretary). Winners receive no compensation for their work except for a pane of their stamps signed by the Secretary. However, artists maintain the copyright to their artwork and may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

An annual rules brochure is published to announce the Contest and provide artists with official entry forms, a list of five or fewer eligible species that may be depicted, and instructions for submitting entries. Any changes to the Contest regulations must be

completed via the formal rulemaking process.

On January 29, 2020, we published a proposed rule (85 FR 5182) to revise the Duck Stamp Contest regulations. We proposed to specify a permanent “celebrating our waterfowl hunting heritage” theme, which would require all qualified Contest entries to include waterfowl hunting-related accessories and/or themes. By requiring this theme, we would recognize the role of hunters, the primary purchasers of Duck Stamps, in raising over \$1.1 billion for waterfowl habitat conservation through the sale of Duck Stamps. The January 29, 2020, proposed rule opened a 45-day public comment period, ending March 16, 2020, and invited comments on the proposed changes from all interested individuals and organizations.

Summary of Public Comments and Responses

We received 708 unique comments on the January 29, 2020, proposed rule (85 FR 5182), which are grouped under appropriate subject-matter headings and addressed below.

Proposed Requirement for a Permanent, Mandatory Waterfowl Hunting Theme

(1) *Comment:* Of the commenters indicating that they were in favor of the permanent theme “celebrating our waterfowl hunting heritage” and subsequent mandatory inclusion of a waterfowl hunting scene or accessory as part of the entry design, several expressed their opinions that it was important and long overdue to recognize hunters’ contributions to conservation and the waterfowl hunting heritage.

Of the commenters who expressed that they opposed the proposed change for the Contest regulations, several commenters stated their belief that the Federal Duck Stamp already celebrates hunting, as the inclusion of hunting-related accessories, hunters, and

hunting scenes are already permitted as an optional part of the Stamp design. Several believed that making such inclusion mandatory was divisive and would jeopardize the Stamp's appeal to non-hunters who are interested in purchasing the Stamp as a way of supporting conservation. Many of those against the change for the Contest did not want the inclusion of hunting-related items to detract from the primary waterfowl and habitat conservation focus of the Stamp. A few commenters expressed the opinion that they were not supportive of a permanent change but proposed a schedule for the "celebrating our waterfowl hunting heritage" theme on a rotating and known cycle.

Service Response: The Service is instituting a permanent theme of "celebrating our waterfowl hunting heritage" that will necessitate the mandatory inclusion of hunting-related accessories in every entry beginning with the 2020 Contest. This change will recognize the contributions of hunters and hunting to waterfowl and wetland conservation.

Inclusion of a Theme

(2) *Comment:* Several commenters felt that requirements for a theme be implemented only with careful consideration of all aspects of the Stamp program, artists, and purchasers of the Stamp. Suggestions were made that proposed themes should have an intrinsic biological or conservation message or celebrate other user and Stamp purchaser groups. Several commenters believed that the inclusion of an annual theme would make a poor-quality stamp and would not significantly improve the resulting design. Several also suggested that the inclusion of objects (such as humans or dogs) to satisfy the requirement of addressing the theme would detract from the natural beauty of the depicted waterfowl. Several commented that only specific species would be eligible

with a mandatory theme, leading the Stamps and artist prints to become repetitive and boring. Commenters also noted that there are relatively few accessories to any theme that could be included in a composition due to the size, scale, and other restrictions of the artwork.

Several commenters suggested, rather than using the Stamp itself to illustrate the theme, that the theme be celebrated on the carrier and other products produced to market the Stamp.

Service Response: The theme of “celebrating our waterfowl hunting heritage” will be permanent beginning with the 2020 Contest, which will require the inclusion of a waterfowl hunting-related accessory or theme in the design of the entry.

Regarding the inclusion of objects in the Stamps, several previous Stamps contained objects such as decoys, dogs, and hunters that have made memorable Stamps. The judges’ mandate will be that they choose the design that will best make an attractive Federal Duck Stamp that illustrates the theme “celebrating our waterfowl hunting heritage.”

Hunter Recognition

(3) *Comment:* Most commenters applauded the huge financial commitment hunters annually put toward wildlife conservation.

One commenter noted that celebrating hunters for legally doing what they are required to do (purchase a Stamp) was an interesting concept. The commenter, who self-identified as a hunter, raised the question of how many hunters would purchase the Duck Stamp if it was not mandatory for them to do so.

Many commenters who purchased Stamps for reasons other than waterfowl

hunting did not feel that their contributions and purchases of Duck Stamps were being acknowledged or appreciated. Others expressed the desire that, although hunters in the past may have been financially responsible for raising conservation dollars, they wanted non-hunters to be encouraged to purchase Stamps and would find it harder to convince them if there was a hunting theme.

Service Response: The recognition of waterfowl hunters' contributions to wildlife and habitat conservation will further the Department of the Interior's priorities of increased sportsperson access on public lands. By focusing on the long heritage of waterfowl hunting on the Federal Duck Stamp, we acknowledge the contributions of waterfowl hunters as conservationists.

Further, upon its conception in 1934, the proper name of the Federal Duck Stamp was the "Migratory Bird Hunting Stamp." The name became "Migratory Bird Hunting and Conservation Stamp" with the 1977–78 Stamp to reflect the broader conservation aspects and primary goal of the Stamp. While the theme and inclusion of a hunting-related accessory and/or scene will be mandatory for the Federal Duck Stamp design, the central focal point and dominant aspect of each entry will still be the live portrayal of at least one of that year's five eligible waterfowl species.

Raising Funds for Wildlife Habitat Conservation

(4) *Comment:* Commenters questioned whether the proposed change would increase interest in the Duck Stamp Program and boost the annual sale of Stamps. Several believed that the hunting theme would alienate non-consumptive buyers, such as stamp collectors, bird watchers, or those expressing support for the National Wildlife Refuge System. Although these discretionary purchasers obtain the Stamp for reasons

other than “because it is mandatory,” their contribution also goes to the conservation of habitat.

Many commenters mentioned the lack of a solid marketing strategy for Duck Stamps, the lack of baseline data on who purchases the Stamp, and the lack of funding and personnel in the Duck Stamp Office.

Service Response: The Service made no change to the final rule in response to these comments. The Federal Duck Stamp has been mandatory to hunt waterfowl since 1934 and has been incredibly successful in conserving habitat for wildlife. By using the theme “celebrating our waterfowl hunting heritage,” we are recognizing the conservation contributions made by millions of waterfowl hunters over this period. The inclusion of this theme provides the opportunity to present information on the history and tradition of waterfowl hunting in the United States.

We appreciate those who voluntarily help fund wildlife habitat conservation through their purchase of Federal Duck Stamps and will continue to encourage non-consumptive wildlife resource users, stamp collectors, and other conservationists to purchase Federal Duck Stamps to support migratory bird habitat conservation. Many individuals, friends groups and birding groups have made a concerted effort over the past several years to encourage purchase of the Stamp by bird watchers, photographers, and other interested in habitat conservation. We hope that current non-consumptive purchasers will recognize that hunting is part of the tradition behind the Federal Duck Stamp and will continue to support conservation afforded by Stamp sales. The inclusion of the “celebrating our waterfowl hunting heritage” theme provides the opportunity to present information on the history and tradition of waterfowl hunting in the United States.

Comments regarding marketing of the Duck Stamp, and funding and staffing of the Duck Stamp Program, are beyond the scope of this rule. The need for baseline data on who purchases the Stamp may be sought to develop a marketing strategy for the Duck Stamp Office. The Service welcomes other ideas that may help promote, market, and sell more Duck Stamps, in particular to non-hunters.

Artist Issues

(5) *Comment:* Several artists expressed their discouragement that the Service has not provided enough time to execute their designs between the time the rules are finalized for 2020 and the Contest due date. Most artists expressed resentment of changes that are not finalized more than 12 months ahead of the beginning of the Contest year and would prefer that we provide final Contest rules and each year's eligible species list at least 3 years ahead of the annual Contest open date (June 1). Adding mandatory elements with less than a full year to research and gather reference materials, design, and then execute their entries will prevent some artists from entering the 2020 Contest.

Several artists felt that the mandatory "inclusion of a hunting accessory" would alienate or discourage many artists. By changing hunting elements from optional to mandatory, several artists stated that they will not enter the Contest on principle. Not all artists are waterfowl hunters or are part of the hunting culture, so they expressed the opinion that they would be at a severe disadvantage as to what qualifies as a hunting accessory. It was suggested that "hunting accessories" be kept as "optional" and the rules to read "recommended but not mandatory."

Another primary concern by artists was that a mandatory theme hampered their creativity. Several felt that the size, position, media, and other restrictions placed on the

artwork were already making it difficult for artists to compose their entries.

One commenter analyzed the entries from the 2018 Contest when the “celebrating our waterfowl hunting heritage” theme was mandatory. The commenter remarked on the lack of racial, sexual, generational, and cultural diversity among the scenes portraying hunters. A second commenter was offended that indigenous hunting methods were not described in the rule. A third commented that the lack of rules in the native languages of people in the U.S. States and Territories was prejudicial and discouraged their ability to enter the Contest.

A final commenter felt that it was difficult for anyone else to interpret an artist’s idea of a “hunting scene” and others would have difficulty determining what qualified as a “hunting element.”

Service Response: We understand the artists’ desire to have rules available to them as early as possible and appreciate the amount of preparation and research needed before artists can design and execute their entries. Unfortunately, we are unable at this time to provide final rules 12 to 36 months ahead of the relevant Contest date. By making this a permanent theme with the mandatory inclusion of waterfowl hunting accessories, artists are hereby informed as to future Contest design requirements. Having a permanent mandatory theme will also allow the Service to set the eligible species lists for successive Contests at least 3 years in advance.

It is not our intention to alienate potential Duck Stamp Contest artists. We hope that the theme will encourage both artists and Stamp purchasers to learn more about the rich tradition of waterfowl hunting. The Federal Duck Stamp has been mandatory to hunt waterfowl since 1934 and has been incredibly successful in conserving habitat for

wildlife. By using the theme “celebrating our waterfowl hunting heritage,” we are recognizing the conservation contributions made by millions of waterfowl hunters over this period. The inclusion of this theme provides the opportunity to present information on the history and tradition of waterfowl hunting in the United States.

Decoys and hunting dogs are among the examples of elements that can be included to satisfy this requirement.

The Duck Stamp Office staff does not like to disqualify any entry and prides itself on advocating for and working with the artists. If an entry is submitted without an identifiable hunting accessory, staff would contact the artist for clarification prior to the Contest start date. In the event that there is a disagreement of the applicability of an element, the Contest Coordinator would be consulted and the argument may be presented to the judging panel for their decision.

It is hoped that the changing demographics of the country will encourage more diversity among artists and in entries. The Service will endeavor to have translations of the entire Contest Brochure available in different languages in the future and will consider developing a single-page Contest Brochure for translation and wider distribution. The Service will rely on liaisons and partnerships to increase and broaden opportunities to promote the Duck Stamp among Tribes, Alaska Natives, and Hawaiian and other Pacific and Caribbean residents living in the States and U.S. Territories.

Judging Requirement/Judge Competency

(6) *Comment:* There was no opposition expressed to the requirement that all selected contest judges have an understanding and appreciation of the waterfowl hunting heritage and the ability to recognize waterfowl hunting accessories. Rather, several

commenters expressed the opinion that waterfowl hunters were the most qualified, or the only ones qualified to judge the Contest.

Other comments were provided on the number and quality of judges on the panel. Proposals ranged from increasing the number of judges from five to seven and dropping the high and low scores; providing judges with a briefing on how to vote; and having the judges pass a competency test.

Service Response: The Service made no changes to the final rule in response to these comments. We will continue to develop a slate of qualified nominees to be judges that will be forwarded to the Secretary of the Interior, or his or her designee, for concurrence. All potential judges will be deemed as qualified if they have one or more of the following qualifications: recognized art credentials; knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species; an understanding of the wildlife sporting world in which the Duck Stamp is used; an awareness of philately and the role the Duck Stamp plays in stamp collecting; and demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community. All selected Contest judges will be vetted prior to nomination to ensure that they have an understanding and appreciation of the waterfowl hunting heritage.

The ability to recognize all waterfowl hunting accessories may necessitate additional discussion and information provided by law enforcement officers (for legality of methods) as well as cultural experts by Contest officials prior to the actual judging process. The Contest Coordinator will provide any necessary background provided from these discussions in his or her briefing remarks with the Contest judges.

The number of judges and testing them for their abilities is outside the scope of

this rulemaking.

Duck Stamp and Wildlife Art Collectors

(7) *Comment:* Comments from those self-identifying as Duck Stamp collectors were mixed. Some believed that their collecting habits would decrease if the traditional Duck Stamp design was radically altered, while others believed that some variation from the standard design could be well accepted.

Comments were also received from wildlife art collectors and those who collect sporting art. Several felt that imposing the theme and mandatory inclusion of hunting-related accessories on Duck Stamps would further restrict print sales and diminish the value of sporting art.

Service Response: The Service made no change to the final rule in response to these comments. We do not believe that the winning artwork will create a Stamp that will be radically different from historical Stamps.

Depiction of Firearms and Gun Violence

(8) *Comment:* Several commenters expressed negative opinions regarding hunting, as well as the possible representation of firearms as part of the Stamp design.

Service Response: Issues regarding gun violence are beyond the scope of this rule. Hunting is a recognized wildlife management tool, and the Service supports the legal and ethical right of lawful hunters to use firearms to hunt wildlife. Contest entries may include other appropriate items to fulfill the thematic requirement that a waterfowl hunting-related accessory and/or scene be included in a contestant's design.

Amendments to Existing Regulations

The Service made no changes to the final rule in response to comments received

from the proposed rule. As we proposed on January 29, 2020, at 85 FR 5182, this rule incorporates the permanent change to adopt the theme of “celebrating our waterfowl hunting heritage” and the mandatory inclusion of a waterfowl hunting-related scene or accessory in every entry beginning with the 2020 Contest.

Accordingly, this rule sets forth:

- The Contest restriction on subject matter for entries at § 91.14(b).
- Judge qualifications at § 91.21(b).
- Language to reflect the permanent mandatory theme at § 91.23.

Effective Date

We are making this rule effective upon publication (see **DATES**, above). We provided a 45-day public comment period for the January 29, 2020, proposed rule (85 FR 5182). We have determined that any further delay in implementing these regulations would not be in the interest of Contest participants, in that a delay would hinder their ability to address the theme required for the 2020 Contest in submitted artwork. This rule does not impact the public generally. Rather, it impacts the small number of artists who submit artwork to the annual Duck Stamp Contest. Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon publication.

Required Determinations

For this final rule, we affirm the following required determinations provided in our January 29, 2020, proposed rule (85 FR 5182):

- National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);
- Endangered Species Act (16 U.S.C. 1531 *et seq.*);
- Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2));
- Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*);
- Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*); and
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, 13563, and

13771.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Regulation Promulgation

For the reasons stated in the preamble, we amend 50 CFR part 91, as set forth below:

PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP CONTEST

1. The authority citation for part 91 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

2. Revise § 91.14(b) to read as follows:

§ 91.14 Restrictions on subject matter for entry.

* * * * *

(b) *Mandatory waterfowl hunting components.* In addition to the restrictions set forth in paragraph (a) of this section, all designs must also include appropriate waterfowl hunting-related accessories or elements celebrating the Federal Duck Stamp's longstanding connection as part of our Nation's waterfowl hunting heritage and the contributions to conservation made by waterfowl hunters. Designs may include, but are not limited to, waterfowl hunting dogs, waterfowl hunting scenes, waterfowl hunting

equipment, waterfowl decoys, or other designs that represent our waterfowl hunting heritage. The designs chosen will clearly meet the theme of “celebrating our waterfowl hunting heritage.”

3. Revise § 91.21(b) to read as follows:

§ 91.21 Selection and qualification of contest judges.

* * * * *

(b) *Qualifications.* The panel of five judges will comprise individuals who have one or more of the following prerequisites: recognized art credentials, knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species, an understanding of the wildlife sporting world in which the Duck Stamp is used, an awareness of philately and the role the Duck Stamp plays in stamp collecting, demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community, and an understanding and appreciation of waterfowl hunting heritage and the ability to recognize waterfowl hunting accessories.

* * * * *

4. Revise § 91.23 to read as follows:

§ 91.23 Scoring criteria for contest.

Entries will be judged on the basis of anatomical accuracy, artistic composition, suitability for reduction in the production of a stamp, and how well they illustrate the theme of “celebrating our waterfowl hunting heritage.”

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

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